IN THE COURT OF APPEALS OF IOWA

No. 0-211 / 09-0967
Filed April 8, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SYLVESTER EFONDA GATES,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch (motion to suppress) and Bradley J. Harris (trial), Judges.

Sylvester Gates appeals, contending the district court erred in denying his motion to suppress. **AFFIRMED.**

Mark C. Smith, Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elizabeth S. Reynoldson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Jeremy Westendorf and Brad Walz, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

Sylvester Gates appeals, contending the district court erred in denying his motion to suppress. We affirm.

I. Facts.

At about 2 a.m. on June 26, 2008, police were dispatched to investigate a complaint of disorderly conduct at 846 Logan in Waterloo. Upon arrival, Officer Steven Bose observed six persons. Officer Bose described the area he approached as "a sidewalk that leads up to a porch that had as two or three stairs, maybe a four-by-four landing, and then a small step up to the house." The officer recognized five of those present, including Sylvester Gates. Sylvester Gates "was sitting on the main landing of the porch right by the front door." Another person was also sitting on the porch; two others were standing on the stairs; one individual was straddling a bike on the concrete just north of the porch; and another individual was standing on the concrete in front of the porch. Officer Bose had arrested at least two of these individuals previously for narcotics violations.

Upon arriving near the front door and the group, Officer Bose noticed corner pieces of plastic bags, a crumpled up lunch-size paper bag containing what appeared to be marijuana or loose tobacco, clear plastic bags "consistent with marijuana," and open containers of alcohol. Officer Bose told them to disperse. Sylvester Gates went inside the residence and then came to the front door and told Officer Bose that his sister was coming out to talk to the officer.

When Gates's sister opened the front door, the light reflected on a clear plastic bag in the six-inch gap between the front porch and the siding of the

house. Officer Bose shined his flashlight in the gap and observed a bag he "realized was crack cocaine." Upon seizure and subsequent testing, the bag was found to contain sixty-two knotted plastic bags of rocks of crack cocaine.

Gates moved to suppress the cocaine. The district court denied the motion to suppress based upon the "plain view" doctrine. *See Coolidge v. New Hampshire*, 403 U.S. 443, 466-67, 91 S. Ct. 2022, 2038, 29 L. Ed. 2d 564, 583 (1971) ("What the 'plain view' cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. . . . [T]he extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the 'plain view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges."). Gates then waived jury trial and he was tried by the court on the minutes of testimony. The court found Gates guilty of possession with intent to deliver cocaine base and being a second offender in violation of Iowa Code sections 124.401(1)(c) and 124.411 (2007). He now appeals, contending the court erred in denying his motion to suppress.

II. Scope and Standard of Review.

We review a ruling on a motion to suppress based on alleged violations of the Fourth Amendment[1] de novo. *State v. Fremont*, 749 N.W.2d 234, 236 (Iowa

[1] On appeal, Gates states the motion "does not specify which constitution—state or federal—is alleged to have been violated." In fact, the motion to suppress challenged "evidence illegally obtained as a result of warrantless seizures and searches conducted at 846 Logan Avenue" pursuant to Iowa Rule of Criminal 2.12(1), without mention of

2008); *State v. Dickerson*, 313 N.W.2d 526, 530 (Iowa 1981). Because this case proceeded to trial, we examine the entire record, not merely the evidence adduced at the suppression hearing, in considering the denial of Gates's motion to suppress. *State v. Washburne*, 574 N.W.2d 261, 264 (Iowa 1997); *accord United States v. Inman*, 558 F.3d 742, 745 (8th Cir. 2009).

III. Analysis.

Gates argues that the officer's shining his flashlight into the gap constituted an unreasonable search and does not meet the *Coolidge* prerequisites for a valid plain view seizure of evidence. In his routing statement, Gates contends that "the 'plain view' exception to the Fourth Amendment warrant requirement should not be extended to include a warrantless search of a residence with artificial illumination (as opposed to that of an automobile)."[2] The State responds that no constitutionally protected search or seizure occurred. We agree.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Not all instances of officer intrusion amount to Fourth Amendment violations, however.

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either the Iowa or United States Constitutions. Gates now contends in conclusory fashion that had the motion been made pursuant to the Iowa Constitution, the result would have been different. He provides no citation or argument in support and we find the issue inadequately raised and thus waived. Iowa R. App. P. 6.903(2)(*g*)(3).

[2] There is serious question whether 824 Logan was Gates's residence. He told an interviewing officer that he had no permanent address because "he stays at a lot of his girls' homes," identifying three different women. He did state he keeps his clothing and personal belongings at the residence and "hangs out" there on a regular basis. We will pass on the question, however, because we conclude there has been no search of a residence.

> We have recognized that the *Coolidge* rationale deals only with a post-intrusion seizure of evidence. . . . [N]either *Coolidge* nor that branch of the doctrine governs a challenged intrusion which is not a search in the constitutional sense . . . .
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> The controlling issue is whether the officers' intrusion in this case infringed [defendant's] reasonable expectation of privacy. *See Katz v. United States*, 389 U.S. 347, 351-52, 88 S. Ct. 507, 511, 19 L. Ed. 2d 576, 582 (1967) ("For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.").
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> . . . [T]he cases recognize the distinction between the observations of a police officer who has positioned himself upon property which has been opened to public common use, and the observations of an officer who ventures onto property which has not been so committed. A sidewalk, pathway, common entrance or similar passageway offers an implied permission to the public to enter which necessarily negates any reasonable expectation of privacy in regard to observations made there. The officer who walks upon such property so used by the public does not wear a blindfold; the property owner must reasonably expect him to observe all that is visible. In substance the owner has invited the public and the officer to look and to see.

Dickerson, 313 N.W.2d at 531 (internal citations omitted).

In *Dickerson*, the defendant moved to suppress items seized pursuant to a search warrant because the warrant was obtained based upon observations officers made through the defendant's house window on an earlier visit to the property. *Id*. at 530. The *Dickerson* court upheld the denial of the motion to suppress, stating:

> People commonly have different expectations, whether considered or not, for the access areas of their 'premises' than they do for more secluded areas. Thus, we do not place things of a private nature on our front porches that we may very well entrust to the seclusion of a backyard, patio or deck. In the course of urban life, we have come to expect various members of the public to enter

> upon such a driveway, e.g., brush salesmen, newspaper boys, postmen, Girl Scout cookie sellers, distressed motorists, neighbors, friends . . . . If one has a reasonable expectation that various members of society may enter the property in their personal or business pursuits, he should find it equally likely that the police will do so.
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> The officers went to the door at which visitors logically would knock. They were engaged in legitimate investigative activities. Their right to be where they were was no less than that of a member of the public calling at the home for any number of similarly legitimate purposes. Thus the officers did not invade defendant's reasonable expectation of privacy by coming to his door.
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> Because they had a right to be there, they had a right to see what was visible from that position. Therefore their visual observations through the window of the door were not an intrusion into a reasonable expectation of privacy. These observations did not constitute a search in the constitutional sense.

Id. at 531-32 (citation omitted); *see also State v. Nitcher*, 720 N.W.2d 547, 554 (Iowa 2006) (citing *Dickerson* and noting officers' detection of odor of ether coming from residence gave them reason to investigate the smell and did not violate a reasonable expectation of property).

If an officer's viewing *through* a front door does not invade a reasonable expectation of privacy, we find the same must be said of a viewing of the area in between the front porch and the front door. *See State v. Lewis*, 675 N.W.2d 516, 523-24 (Iowa 2004) (explaining difference between officers' observations from unsecured driveway of persons in fenced backyard and enclosed rear porch, which does not implicate Fourth Amendment, and warrantless entry into the fenced backyard and enclosed porch, which is protected area). Illumination of the area by flashlight does not change our analysis. *State v. Lamp*, 322 N.W.2d 48, 52 (Iowa 1982) (stating that the fact that artificial light is used to illuminate articles that would be readily visible in daylight does not affect the validity of the

observation); *accord United State v. Lee*, 274 U.S. 559, 564, 47 S. Ct. 746, 747, 71 L. Ed 1202, 1204 (1927) (finding use of searchlight by Coast Guard to illuminate the deck of boat "[i]s not prohibited by the Constitution").

IV. Conclusion.

Because there was no search in the constitutional sense, we need not address the *Coolidge* plain view exception. Gates had no reasonable expectation of privacy in the area where the contraband was found. The district court did not err in denying the motion to suppress. We affirm.

AFFIRMED.